IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 97 of 2006.

Date of Decision: 4th September, 2006.

Seema Devi and others. …. Petitioners

Versus

New India Assurace Co. & others. Respondents

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The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting[2]?

For the Petitioners: **Mr. J.L. Bhardwaj, Advocate.**

For the respondents: **Mr. B.M. Chauhan, Advocate, for respondent No.1.**

Mr. K.R. Thakur, Advocate, for respondents No.2 and 3.

V.K. Gupta, C.J. (Oral).

An application was filed by respondent No.1 – New India Assurance Co. Ltd. (respondent No.3 in the claim petition before the Motor Accidents Claims Tribunal, Shimla) under Section 170 of the Motor Vehicles Act, 1988 with a prayer that this respondent be allowed to take all the defences available to the insured. By the impugned order dated 24th March, 2006, the learned Motor Accidents Claims Tribunal, Shimla has allowed

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Whether reporters of the Local Papers are allowed to see the Judgment?

this application. The text of the impugned order for ready reference is reproduced hereinbelow which reads thus:-

> "Applicant Insurance Company permitted to contest the petition on all legal grounds, because applicant apprehends that petition is filed by the applicant in collusion with the respondents No.1 and 2. Application stand disposed of. Be tagged with the main file."

Section 170 of the Motor Vehicles Act, 1988 stipulates that where in the course of any inquiry, the Claims Tribunal is satisfied that either there is collusion between the person making the claim and the person against whom the claim is made, or the person against whom the claim has been made has failed to contest the claim, the Claims Tribunal may for the reasons to be recorded in writing direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceedings and shall also thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149 of the Act, the right to contest the claim on all or any of the grounds which are available to the person against whom the claim has been made.

A bare perusal of the impugned order shows that it has been passed in a slipshod manner, mechanically and apparently without any application of mind. The impugned order on its very face shows and indicates that it is totally bereft of any reason despite the fact that Section 170 itself, in explicit terms enjoined upon the learned Tribunal to record the reasons in writing. It is very unfortunate and painful to know that a very senior Judicial Officer in the rank of the District and Sessions Judge in his capacity as the Presiding Officer of the Tribunal passed an order allowing an application under Section 170 of the Act in a slipshod manner and without assigning cogent and valid reasons in support of the order.

Coming to the facts of the case, whereas presently the New India Assurance Company already stands impleaded as a party-respondent in the Claim Petition, it had filed an application limited to the relief of claiming the right to contest the Claim Petition on the grounds available to the persons against whom the claim has been made, namely, respondents No.1 and 2. Not only has the application been allowed by passing the impugned order in a slipshod manner,

the learned Tribunal before passing the order did not even afford any opportunity to respondents No.1 and 2 in the Claim Petition (respondents No.2 and 3 herein) to file their replies to the application, especially also because specific allegation was made qua these respondents to the effect that the claim petition had been filed between the claimants and respondents No.1 and 2 in collusion with each other and that respondents No.1 and 2 had failed to contest the claim petition. Whereas objections had been invited from and were filed by the petitioners-claimants to the aforesaid application, no such objection or reply was invited from respondents No.1 and 2 in the Claim Petition. I am surprised to find out that the learned Tribunal proceeded to decide the application on its merits without having before it the version of respondents No.1 and 2 in the Claim Petition.

For the foregoing reasons, this petition is allowed. The impugned order is set aside. The matter is remitted to the learned Tribunal for deciding the application filed by the New India Assurance Co. Ltd. under Section 170 of the Act afresh in the light of the aforesaid observations. It is directed that the learned Tribunal shall

keep the provisions of Section 170 in mind and ensure that the application is disposed of after obtaining the reply from respondents No.1 and 2 in the claim petition and pass a speaking, well reasoned order.

Mr. K.R. Thakur, learned counsel appearing for respondents No.1 and 2 in the claim petition undertakes to file the reply on the next date fixed in the Tribunal by me today.

The record be sent back to the Tribunal where the parties through their learned counsel are directed to appear on 20th September, 2006. The Tribunal is directed to dispose of the application in the month of September itself.

4th September, 2006. (V.K. Gupta), C.J.
(tr)